

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION

STATE OF TEXAS,)	
)	
Plaintiff,)	
)	
v.)	Civil No. 1:13-CV-00255-C
)	ECF
EQUAL EMPLOYMENT)	
OPPORTUNITY COMMISSION, <i>et al.</i> ,)	
)	
Defendants)	

**UNOPPOSED MOTION FOR EXTENSION OF TIME TO ANSWER OR
OTHERWISE RESPOND AND BRIEF IN SUPPORT**

Defendants, the Equal Employment Opportunity Commission (EEOC) and EEOC Chair Jacqueline A. Berrien, respectfully move for a 14-day extension of time, from January 13, 2014 to January 27, 2014, within which to answer or otherwise respond to the complaint. Defendants offer the following support for this request:

1. The State of Texas filed a complaint challenging the legality of EEOC enforcement guidance, *see* EEOC, Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964, No. 915.002 (Apr. 25, 2012), and the constitutionality of Title VII, to the extent it imposes liability on the State for disparate-impact discrimination. Compl. ¶¶ 29-43.

2. Plaintiff served the complaint on the U.S. Attorney's Office on November 12, 2013. Affidavit of Service for Summons and Compl., Dec. 13, 2013, Doc. No. 10. Thus, defendants' answer is due Monday, January 13, 2014. Fed. R. Civ. P. 12(a)(2),

6(a)(1)(C).

3. Defendants request a 14-day extension of time to answer or otherwise respond because of holiday-related work absences. Lead counsel for defendants was out of the office from December 23 through December 27 on a long-scheduled family vacation. And agency counsel at the EEOC, with whom lead counsel will coordinate the defense, has been out of the office since December 19 and will not be returning to the office until January 6.

4. In addition, the press of other business supports the requested extension. Currently, lead counsel for defendants has a reply brief due January 6 in *American Orthotic & Prosthetic Association v. Sebellius*, 1:13-CV-697 (D.D.C.) (RCL), and an oral argument on a motion to dismiss in San Francisco, California scheduled for January 8 in *Garcia v. McCarthy*, 13-CV-3939 (N.D. Cal.) (WHO). Given the length of the flight between Washington, D.C. and San Francisco, the trip to San Francisco (including the day of the argument) likely will consume three business days.

5. The State does not object to the requested extension.

6. For the forgoing reasons, defendants ask the Court to extend the deadline to answer or otherwise respond to the complaint by 14 days, until January 27, 2014.

DATED this 31st day of December, 2013.

Respectfully submitted,

STUART F. DELERY
Assistant Attorney General

SARAH R. SALDAÑA
United States Attorney

JOSHUA E. GARDNER
Assistant Director, Federal Programs
Branch

s/ Justin M. Sandberg
JUSTIN M. SANDBERG, IL Bar No.
6278377
Trial Attorney
U.S. Department of Justice
Civil Division, Federal Programs Branch
20 Mass. Ave. NW, Rm. 7302
Washington, D.C. 20001
Telephone: (202) 514-5838
Facsimile: (202) 616-8202
Justin.Sandberg@usdoj.gov
Counsel for Defendants

CERTIFICATE OF CONFERENCE

I conferred with counsel for the plaintiff, Solicitor General Mitchell, via electronic mail on December 30, 2013. Mr. Mitchell stated that plaintiff has no objection to the requested 14-day extension of time.

s/ Justin M. Sandberg
JUSTIN M. SANDBERG
Trial Attorney
U.S. Department of Justice

CERTIFICATE OF SERVICE

I hereby certify that, on December 31, 2014, a true and correct copy of the foregoing was served by CM/ECF on:

Jonathan F. Mitchell
Andrew Stephen Oldham
Arthur D'Andrea
Office of the Texas Attorney General
209 West 14th Street
P.O. Box 12548
Austin, Texas 70711-2548

s/ Justin M. Sandberg
JUSTIN M. SANDBERG
Trial Attorney
U.S. Department of Justice